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May 10, 2018

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

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Steven Sylvester
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G3 Enterprises, Inc.
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Modesto, California 95354

MAY 15 2018

RE: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT") (33 U.S.C. §§ 1251 *et seq.*)

Dear Mr. Cook and Mr. Sylvester,

This firm represents California Sportfishing Protection Alliance ("CSPA"), a California non-profit corporation, in regard to violations of the Clean Water Act ("CWA" or "the Act") occurring at the G3 Enterprises, Inc. Closure facility, which manufactures closures for the beverage industry, located at 500 South Santa Rosa Avenue, Modesto, California 95354 (the "Facility") with Waste Discharger Identification Number ("WDID") 5S50I002698. This letter is being sent to you as the responsible owners, officers, and/or operators of the Facility. Unless otherwise noted, G3 Enterprises, Inc., which will do business in California as Delaware G3 Enterprises, Inc., shall hereinafter be referred to as "G3 Enterprises" and G3 Enterprises, Thomas Cook and Steven Sylvester shall be collectively referred to as the "Owners/Operators" of the Facility. CSPA is a non-profit public benefit conservation and research organization dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources throughout the state of California, including Dry Creek and the Tuolumne River into which G3 Enterprises discharges polluted storm water.

G3 Enterprises is in ongoing violation of the substantive and procedural requirements of the CWA, 33 U.S.C. section 1251 *et seq.*; and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 ("General Permit"), Water Quality Order No. 97-03-DWQ ("1997 General Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 General Permit").

The 1997 General Permit was in effect between 1997 and June 30, 2015, and the 2015 General Permit went into effect on July 1, 2015. As will be explained below, the 2015 General Permit includes many of the same fundamental requirements, and implements many of the same statutory requirements, as the 1997 General Permit. Violations of the General Permit constitute ongoing violations for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each separate violation of the CWA occurring before November 2, 2015 commencing five years prior to the date of this Notice of Violation and Intent to File Suit subjects G3 Enterprises, Inc. to a penalty of up to $37,500 per day; violations occurring after November 2, 2015 and assessed on or after August 1, 2016 subjects G3 Enterprises to a penalty of up to $51,570 per day. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) of the Act (33 U.S.C. §§ 1365(a), (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The CWA requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. 135.2.

As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act (33 U.S.C. § 1365(a)) in federal court against G3 Enterprises for violations of the Act and the General Permit.

I. Background

A. The Clean Water Act

Congress enacted the CWA in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *see also San Francisco Baykeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987)

(codified at 33 U.S.C. § 1342(p)); *see also Envtl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Act's permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a NPDES permit, is illegal. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California's intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers, as well as through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California's State Board Water Resource Control Board ("State Board") to issue individual and general NPDES permits in California. 33 U.S.C. § 1342. The State Board coordinates with the Central Valley Regional Water Quality Control Board ("Regional Board"), which has shared jurisdiction over the Facility for state and federal water pollution control efforts.

B. California's General Permit for Storm Water Discharges Associated with Industrial Activities

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which CSPA refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ, the General Permit was reissued, including many of the same fundamental terms as the prior permit. For the purposes of this notice letter, CSPA refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for the purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.*

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA. The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements. Beginning under the 2015 General Permit Facilities must submit Exceedance Response Action Plans ("ERA Report") to the State Board outlining

effective plans to reduce pollutants if a Facility reports a pollutant above the Numeric Action Level ("NAL"). An annual NAL exceedance occurs when the average of all the analytical results for a parameter from samples taken within a reporting year[1] exceeds the annual NAL value for that parameter. An instantaneous maximum NAL exceedance occurs when two (2) or more analytical results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NAL value or are outside of the instantaneous maximum NAL range for pH. 2015 General Permit XII.A.

C. G3 Enterprises' Closure Facility

The G3 Enterprises' Closure Facility is located at 500 South Santa Rosa Avenue, Modesto, California 95354. The Facility's general purpose is manufacturing closures for the beverage industry. The Facility operates at least Monday through Friday during regular business hours. Industrial activities occur consistently during operating hours.

The Facility's Notice of Intent to Comply with the General Permit ("NOI")[2] establishes that G3 Enterprises operates under Standard Industrial Classification ("SIC") Code 3499 – Fabricated Metal Products, Not Elsewhere Classified.

Under SIC Code 3499, the General Permit requires G3 Enterprises to analyze storm water samples for Total Suspended Solids ("TSS"); Oil and Grease (O&G"); pH; Zinc ("Zn"); Nitrate +Nitrite Nitrogen ("N+N"); Iron ("Fe"), and Aluminum ("Al"). 2015 Permit at 42. Facilities must also sample and analyze for additional parameters identified on a facility specific basis to reflect pollutant a source assessment, due to receiving water impairments, or as required by the Regional Board. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6.

Industrial operations at the Facility consist of the manufacture of beverage closure products and services related to the packaging industry. According to G3 Enterprises' SWPPP, the G3 Enterprises' manufacturing facility manufactures closures for the beverage industry. Such closures include cork, caps, capsules, and stoppers. G3 Closure receives natural, composite, and synthetic cork as a raw material. The cork is then printed or branded. For caps, G3 Closure receives both coils and sheets of pre-printed aluminum. This raw material is put into a press where the cap shells are stamped out. The cap shells are then conveyed to slitting and lining equipment. For capsules, G3 Closure receives coils of extruded PVC material, aluminum foil material, and polylaminate material. This material is fed into equipment where a thin bead of glue is placed on one edge of the material. Next, the material is cut into segments, placed on a spindle, and wrapped. Heat is applied to the PVC material so it will take the shape of

[1] A reporting year under the General Permit is July 1 to June 30.
[2] Pursuant to the Facility's NOI, G3 Enterprises submitted an NOI for coverage under the 2015 General Permit on or about May 3, 2015. CSPA is informed and believes the G3 Enterprises also submitted and NOI for coverage under the 1997 General Permit.

the spindle. G3 Enterprises receives large volumes of low density polyethylene for stoppers and pour spouts. This material is injection molded into stoppers.

In addition to the manufacturing facility, G3 Enterprises consists of an indoors maintenance shop; material storage and process areas; outdoor shipping and receiving areas; indoor vehicle storage; hazardous and non-hazardous waste storage; recycling collection areas, where cardboard, plastic, scrap wood, and scrap metal, including aluminum, may be collected. Outdoor process areas are paved. Equipment located on facility roof tops includes a cooling tower, HVAC units, and exhaust stacks for electrostatic precipitators.

Operations causing dust or particulate are generated both indoors and outdoors at the Facility by bulk handling and storage of raw materials. The G3 Enterprises Facility's air quality control permit issued by the San Joaquin Valley Air Pollution Control District contains conditions, which pertain to, among other concerns, controlling visible dust emissions. Control measures implemented at G3 Closure include use of dust collection for the conveying systems located inside the facility buildings.

Potential pollutants onsite at the Facility include but are not limited to raw materials for manufacturing processes, exhaust, fuels, scrap metals, antifreeze, hazardous substances, hazardous waste, finished materials, waste materials, materials stored outdoors in bins, and vehicles and manufacturing equipment.

Discharges from the Facility include non-storm water discharges such as manufacturing equipment and vehicle washing, cleaning of buildings, pavement and unpaved areas, water contact with materials improperly disposed or dumped, water contact with spilled or leaked materials, fire hydrant flushing, discharges from refrigeration, air conditioning and compressor units, irrigation and other drainage, and landscape watering.

Storm water runoff discharges via storm drains located in and around the Facility to Dry Creek and the Tuolumne River. Dry Creek and the Tuolumne River are waters of the United States within the meaning of the CWA. Dry Creek and the Tuolumne River are in close proximity to the Facility. CSPA is informed and believes that fugitive storm water runoff also discharges from the borders of the Facility.

CSPA is informed and believes that pollutants from the Facility are also directly deposited via aerial deposition into Dry Creek and the Tuolumne River from manufacturing exhaust, fugitive dust, and vehicle tracking from Facility. Tracking from the Facility also contacts stormwater offsite and flows into the Dry Creek and the Tuolumne River.

G3 Enterprises' SWPPP map indicates that there are at least six (6) storm drains – and therefore at least six potential sampling locations, not including fugitive runoff

from border areas – at the Facility. Storm water samples are collected at only one location: a catch basin in the shipping and receiving area. Exhaust residue, metals, and dirt and solids from facility roof, pollutants from outdoor storage of equipment and manufacturing processes, pollutants from vehicles, and pollutants from the paved and unpaved areas at the Facility all are likely to be present in storm water discharges from the Facility. Yet G3 Enterprises asserts that the single sampling location in the shipping and receiving drainage area is representative of the quality and quantity of G3 Enterprises storm water discharges from storm events at all discharge locations.

II. G3 Enterprises' Violations of the Act and the General Permit

Based on its review of available public documents, CSPA is informed and believes that G3 Enterprises is in ongoing violation of both the substantive and procedural requirements of the CWA, and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, G3 Enterprises is subject to penalties for violations of the Act since May 10, 2013. CSPA expects to identify additional storm water pollutant discharges in violation of the CWA through further investigation of the Facility.

A. G3 Enterprises Discharges Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations

G3 Enterprises' storm water sampling results provide conclusive evidence of its failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

1. Applicable Water Quality Standards

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule ("CTR") is an applicable water quality standard under the General Permit, violation of which is a violation of Permit conditions. Cal. Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc., 2015 U.S. Dist. LEXIS 108314, *21 (E.D. Cal. 2015) CTR establishes numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes a numeric limit for at least one of the pollutants discharged by the G3 Enterprises: Zinc – 0.12 mg/L (maximum concentration).

Under the applicable EPA regulations[3] all surface and ground waters of the State of California are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards unless a strict use attainability analysis is performed based upon a structured scientific assessment of the factors affecting the attainment of uses specified in Section 101(a)(2) of the Clean Water Act (the so called "fishable/swimmable" uses). 40 CFR 131.10(a) and (g).

The *Water Quality Control Plan for the Central Valley Region* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to G3 Enterprises' storm water discharges. The Basin Plan identifies existing and potential Beneficial Uses for Tuolumne River which include contact and non-contact water recreation, wildlife habitat, cold and warm freshwater habitat, warm and cold water migration, irrigation, and warm water spawning. The Basin Plan includes a narrative toxicity standard which states that "(a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." The Basin Plan sets forth water quality objectives for dissolved metals, including arsenic, zinc, copper, iron, and mercury. The Basin Plan's Water Quality Standards also include special limitations for the Tuolumne River and the Tuolumne River Watershed (Basin Plan).

2. Applicable Effluent Limitations

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable ("BAT") for toxic and nonconventional pollutants and best conventional

[3] https://www.epa.gov/sites/production/files/2014-11/documents/ca-amend-resolution-88-63.pdf

pollutant control technology ("BCT") for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA ("EPA benchmarks") serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals,* 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by G3 Enterprises: Total Suspended Solids – 100 mg/L; pH – 6-9 s.u., Aluminum – 0.75 mg/L, Zinc 0.117 mg/L, Nitrate + Nitrite Nitrogen – 0.68 mg/L, Oil and Grease – 15 mg/L, and Iron – 1 mg/L. The Basin Plan's Water Quality Standards for Central Valley also requires a narrower pH range of 6.5 – 8.5 pH units (Basin Plan).

3. G3 Enterprises' Storm Water Sample Results

Except as provided in Section XI.C.4 of the 2015 General Permit, samples shall be collected from each drainage area at all discharge locations. The samples must be: a. Representative of storm water associated with industrial activities and any commingled authorized non-storm water discharges; or, b. Associated with the discharge of contained storm water.

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations, and effluent limitations of the Permit.

a. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge[4] Location	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
2/26/2014	Shipping Lot	TSS	194	100
3/11/2015	Shipping Lot	TSS	109	100
11/2/2015	Shipping Lot	TSS	122	100
12/3/2015	Shipping Lot	TSS	114	100

[4] Information available to CSPA indicates that all results detailed in the tables herein are from the shipping and receiving lot at the Facility.

Date	Discharge Location	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
1/22/2016	Shipping Lot	TSS	177	100
3/11/2016	Shipping Lot	TSS	139	100
1/18/2017	Shipping Lot	TSS	195	100

b. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Location	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
11/20/2013	Shipping Lot	Al	1.7	0.75
2/26/2014	Shipping Lot	Al	4.1	0.75
12/11/2014	Shipping Lot	Al	1.4	0.75
3/11/2015	Shipping Lot	Al	0.9	0.75
11/2/2015	Shipping Lot	Al	0.8	0.75
12/3/2015	Shipping Lot	Al	2.25	0.75
1/22/2016	Shipping Lot	Al	2.34	0.75
3/11/2016	Shipping Lot	Al	1.17	0.75
11/26/2016	Shipping Lot	Al	0.795	0.75
12/10/2016	Shipping Lot	Al	1.01	0.75
1/18/2017	Shipping Lot	Al	0.92	0.75

c. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Location	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
11/20/2013	Shipping Lot	Fe	2.5	1.0
2/26/2014	Shipping Lot	Fe	6.45	1.0
12/11/2014	Shipping Lot	Fe	2.47	1.0
3/11/2015	Shipping Lot	Fe	1.76	1.0
11/2/2015	Shipping Lot	Fe	1.26	1.0
12/3/2015	Shipping Lot	Fe	3.74	1.0

Date	Discharge Location	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
1/22/2016	Shipping Lot	Fe	4.32	1.0
3/11/2016	Shipping Lot	Fe	2.12	1.0
11/26/2016	Shipping Lot	Fe	1.59	1.0
12/10/2016	Shipping Lot	Fe	2.43	1.0
1/18/2017	Shipping Lot	Fe	1.22	1.0

d. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Location	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
11/20/2013	Shipping Lot	Zn	0.48	0.117
2/26/2014	Shipping Lot	Zn	1.32	0.117
12/11/2014	Shipping Lot	Zn	0.58	0.117
3/11/2015	Shipping Lot	Zn	1.25	0.117
11/2/2015	Shipping Lot	Zn	0.46	0.117
12/3/2015	Shipping Lot	Zn	0.598	0.117
1/22/2016	Shipping Lot	Zn	0.576	0.117
3/11/2016	Shipping Lot	Zn	0.45	0.117
11/26/2016	Shipping Lot	Zn	0.366	0.117
12/10/2016	Shipping Lot	Zn	0.395	0.117
1/7/2017	Shipping Lot	Zn	0.177	0.117
1/18/2017	Shipping Lot	Zn	0.196	0.117

e. Discharges of Storm Water Containing Nitrate + Nitrite Nitrogen (N+N) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Location	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
12/3/2015	Shipping Lot	N+N	0.701	0.68

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f. G3 Enterprises' Sample Results Are Evidence of Violations of the General Permit

G3 Enterprises' sample results demonstrate violations of the General Permit's discharge prohibitions, receiving water limitations, and effluent limitations set forth above. CSPA is informed and believes that the G3 Enterprises has known that its storm water contains pollutants at levels exceeding the EPA or General Permit standards since at least January 1, 2006.

CSPA alleges that such violations occur each time storm water or non-storm water discharges from the Facility. Attachment A hereto sets forth the specific rain dates on which CSPA alleges that G3 Enterprises has discharged storm water containing impermissible levels of TSS, Aluminum, Zinc, Iron, and Nitrate + Nitrite Nitrogen in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B. Additionally, G3 Enterprises has not uploaded storm water sample results to the Storm Water Multiple Application Tracking System ("SMARTS," an online database for dischargers to electronically file their storm water permit documents) database since April 10, 2017, for samples taken on January 18, 2017. CSPA is informed and believes that violations have continued since G3 Enterprises last sampled storm water runoff and uploaded laboratory reports evidencing same. Pursuant to SMARTS, G3 Enterprises has yet to sample and analyze storm water runoff in the 2017-2018 reporting year, a violation of the 2015 General Permit which requires analysis of two storm water samples in the first half of any reporting year, and analysis of two storm water in the second half of the any reporting year.

Because G3 Enterprises recorded averages of testing above Numeric Action Levels ("NALs"), which are equivalent to the standard EPA Benchmark Limits for some of these parameters, it has been required to take Exceedance Response Action ("ERA"). There are two ERA levels: Level 1 and Level 2. A Discharger that does not fully comply with the Level 1 status and/or Level 2 status ERA requirements, when required by the terms of the General Permit, is in violation of the 2015 General Permit. Section I(M) (Finding 63).

Level 1 status commences on July 1 following the reporting year during which the exceedance(s) occurred. *See* 2015 Permit, Section XII.C. By October 1, permittees are required to: complete an evaluation of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s) and identify Best Management Practices ("BMPs") in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the 2015 General Permit. *See* 2015 General Permit, Section XII.C. I.a-c. Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated. *See* 2015 General Permit, Section XII.C.I.c. Based

upon this Level 1 status evaluation, the permittee is required to revise the SWPPP as necessary, implement any additional BMPs identified in the evaluation, and certify and submit via SMARTs a Level 1 ERA report. *See* 2015 General Permit, Section XII.C.2.a.i.-ii. A permittee's Level 1 status for a parameter will return to baseline status once a Level 1 ERA Report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sample subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. *See* 2015 General Permit, Section XII.C.2.b.

A permittee's Level 1 status for any given parameter shall change to Level 2 status if sampling results indicate an NAL exceedance for that same parameter while the discharger s in Level 1. *See* 2015 General Permit, Section XII.D. Permittees with Level 2 status are required to certify and submit via SMARTS a Level 2 ERA Action Plan that addresses each new Level 2 NAL exceedance. *See* 2015 General Permit, Section XII.D.1.a. For each new Level 2 NAL exceedance, the Level 2 Action Plan must identify which of the demonstrations in subsection D.2.a through c the permittee has selected to perform. *See* 2015 General Permit, Section XII.D.1.a. The Level 2 ERA Action Plan shall at a minimum address the drainage areas with corresponding Level 2 NAL exceedances. *See* 2015 General Permit, Section XII.D.I.c. A discharger with Level 2 status shall certify and submit a Level 2 ERA Technical Report that must adhere to series of requirements as detailed in Section XII.D.2.a.i through iii of the 2015 General Permit.

Dischargers with Level 2 status who submit an Industrial Activity BMPs Demonstration in accordance with subsection 2.a.i through iii and have implemented BMPs to prevent future NAL exceedance(s) for the Level 2 parameter(s) shall return to baseline status for that parameter, if results from four (4) subsequent consecutive qualified storm events sampled indicate no additional NAL exceedance(s) for that parameter(s). If future NAL exceedances occur for the same parameter(s), the Discharger's baseline status will return to Level 2 status on July 1 in the subsequent reporting year during which the NAL exceedance(s) occurred. These Dischargers shall update the Level 2 ERA Technical Report as required Section D.3.c of the 2015 General Permit.

G3 Enterprises entered Level 1 following the 2015-2016 reporting year, submitting a Level 1 Technical Report to the State Board on or about December 28, 2016. G3 Enterprises entered Level 2 following the 2016-2017 reporting year, submitting a Level 2 Action Plan to the State Board on or about December 19, 2017. The Facility exceeded the NALs for TSS for the 2015-2016 reporting year, and for Zinc, Iron, and Aluminum for the both the 2015-2016 and 2016-2017 reporting years. The Facility is currently at ERA Level 2 for Zinc, Iron, and Aluminum in the current reporting year.

G3 Enterprises' responses to ERA Level 1 and Level 2 have been insufficient. In the 2015-2016 reporting year, the Facility exceeded the NALs for TSS by a factor of 1.38, for Zinc by a factor of 2, for Iron by a factor of 2.86, and for Aluminum by a factor of 2.19. In the 2016-2017 reporting year, the Facility exceeded the NALs for Zinc by a factor of 1.08, for Iron by a factor of 1.30, and for Aluminum by a factor of 1.01. Because G3 Enterprises has not uploaded any resulting samples to SMARTs since samples taken on January 18, 2017, it is unknown whether, and by how much, the Facility continues to exceed the NALs for these parameters. However, given G3 Enterprises' continued NAL exceedances for Zinc, Iron, and Aluminum, its BMP development and implementation has thus far been "not sufficient to meet the NALs." *See* ERA Level 2 Report at 2. Per the ERA Level 2 report, new planned BMPs are claimed to be dependent on sampling conducted in the 2017-2018 reporting year, but no storm water sampling analysis has been reported to SMARTS for the 2017-2018 reporting year. Likewise, an updated SWPPP incorporating the planned Level 2 BMPs has not been uploaded to SMARTS, and thus is presumed to not exist, in violation of the General Permit.

4. G3 Enterprises Has Failed to Implement BAT and BCT

Dischargers must implement adequate BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. *See* 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2. Sampling results of magnitudes well in excess of benchmark levels, as reported by G3 Enterprises, are evidence that G3 Enterprises does not have BMPs that achieve BAT/BCT. *See Santa Monica Baykeeper v. Kramer Metals, Inc.* 619 F. Supp. 2d 914. 925 (C.D. Cal. 2009).

G3 Enterprises has failed to implement the minimum BMPs required by the General Permit, including: sufficient good housekeeping requirements; preventive maintenance requirements; management of runoff; material handling and waste management requirements; employee training; and quality assurance and record keeping. 1997 General Permit, Sections A.8.a(i–x); 2015 General Permit, Sections X.H.1(a–g).

G3 Enterprises has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day the Owners/Operators have failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the CWA (33 U.S.C. § 1311(a)). The violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. Accordingly, the Owners/Operators have been in violation of the BAT and BCT requirements at the Facility every day since at least May 10, 2013.

5. G3 Enterprises Has Failed to Develop and Implement an Adequate Storm Water Pollution Plan

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the State Board's SMARTS system their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

CSPA's investigation indicates that G3 Enterprises has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. G3 Enterprises has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations.

Each day the Owners/Operators failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. The Owners/Operators have been in violation of these requirements at the Facility every day since at least May 10, 2013.

6. G3 Enterprises has Failed to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

Section B(1) and Provision E(3) of the 1997 General Permit required Facility Owners/Operators to develop and implement an adequate Monitoring and Reporting Program. Similarly, Section X.I of the 2015 General Permit requires Facility

Owners/Operators to develop and implement a Monitoring Implementation Plan ("MIP"). The primary objective of the monitoring and reporting requirements is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 General Permit, Section B(2); 2015 IGP Fact Sheet, Section II.J(1). Monitoring undertaken must therefore determine whether pollutants are being discharged, and whether response actions are necessary, and must evaluate the effectiveness of BMPs. *See* General Permit, Section I.J(56).

Sections B(5) and B(7) of the 1997 General Permit required the Facility Owners/Operators to collect at least two (2) samples from each discharge location at their Facility during the reporting year. Section XI of the 2015 General Permit requires dischargers to collect at least four (4) samples from each discharge location at the Facility during the reporting year. The General Permit also requires the Owners/Operators to visually observe and collect samples of storm water from all locations where storm water is discharged. Under XI.B of the 2015 General Permit, Storm water samples must be analyzed for TSS, pH, O&G, and other pollutants that are likely to be present in the Facility's discharges in significant quantities. *See* 2015 General Permit, Section XI.B(6).

The Facility Owners/Operators have been conducting operations at the Facility with an inadequately developed, implemented, and/or revised MIP. Upon information and belief, the Facility Owners/Operators have not collected samples from all discharge points each, or any, time they have undertaken sampling at the Facility. As discussed above, the G3 Enterprises Facility collects storm water samples at only one location: a catch basin in the shipping and receiving area. However, G3 Enterprises' SWPPP site map indicates that there are at least six (6) storm drains – and therefore at least six (6) potential sampling locations, not including areas of fugitive storm water runoff – at the Facility. Based on information available to CSPA, the Facility Owners/Operators have failed to properly collect samples from any discharge locations, despite sufficient rain events of .1 inch or more recorded nearby in the 2017-2018 reporting year (*see* Exhibit A), and in previous reporting years have not sampled from drainage areas with differing industrial activities and pollutants than the shipping and receiving area. The Owners/Operators have also submitted sampling reports and laboratory analysis for multiple sampled qualified storm events at the Facility, happening over a period of months, at the same time in a single upload to SMARTS, in violation of the 2015 General Permit which requires timely reporting.

The Facility Owners'/Operators' failure to conduct sampling and monitoring as required by the General Permit demonstrates that it has failed to develop, implement, and/or revise an MIP that complies with the requirements of Section B and Provision E(3) of the 1997 General Permit and Section XI of the 2015 General Permit. Every day that the Facility Owners/Operators conduct operations in violation of the specific monitoring requirements of the 1997 General Permit or the 2015 General Permit, or with

an inadequately developed and/or implemented MIP, is a separate and distinct violation of the 1997 General Permit or the 2015 General Permit, and the Clean Water Act. The Facility Owners/Operators have been in daily and continuous violation of the General Permit's MIP requirements every day since at least May 10, 2013. These violations are ongoing, and CSPA will include additional violations when information becomes available, including specifically continuing violations of the 2015 General Permit monitoring requirements (*see* 2015 General Permit, Section XI.). The Facility Owners/Operators are subject to civil penalties for all violations of the Act occurring since May 10, 2013.

7. G3 Enterprises' Failure to Comply with the General Permit's Reporting Requirements

Section B(14) of the 1997 General Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 General Permit includes the same annual reporting requirement. *See* 2015 General Permit, Section XVI.

The Facility Owners/Operators have also submitted incomplete Annual Reports. For instance, the Facility operators must report any noncompliance with the General Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 General Permit, Section C(11)(d). The Facility Owners/Operators did not report their non-compliance as required. Further, G3 Enterprises failed to undertake sampling and report results from every discharge point at the Facility, as required by the General Permit.

Last, the General Permit requires a permittee whose discharges violate the General Permit Receiving Water Limitations to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards, along with an implementation schedule. 1997 General Permit, Receiving Water Limitations C(3) and C(4). Information available to CSPA indicates that the Facility Owners/Operators failed to submit sufficient reports as required by Receiving Water Limitations C(3) and C(4) of the 1997 General Permit. As such, the Owners/Operators are in daily violation of this requirement of the General Permit.

Information available to CSPA indicates that the Facility Owners/Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the

General Permit. And, as discussed above, information available to CSPA also suggests that ERA Reports submitted by the Facility are insufficient with proposed and implemented BMPs proving ineffective in reducing pollutants to levels compliant with the CWA. The Facility's reporting of qualified storm events has also been routinely tardy. As such, the Owners/Operators are in daily violation of the CWA and General Permit. Every day the Facility Owners/Operators conduct operations at the Facility without reporting as required by the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. section 1311(a). The Facility Owners/Operators have been in daily and continuous violation of the General Permit's reporting requirements every day since at least May 10, 2013. These violations are ongoing, and CSPA will include additional violations when information becomes available, including specifically violations of the 2015 General Permit reporting requirements (*see* 2015 General Permit, Section XVI.). The Facility Owners/Operators are subject to civil penalties for all violations of the Clean Water Act occurring since May 10, 2013.

III. Persons Responsible for the Violations

CSPA puts G3 Enterprises on notice that it is the entity responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts G3 Enterprises on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party

The name, mailing address, and telephone number of the noticing party is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Ave.
Stockton, CA 95204
(209) 464-5067
Bjennings@calsport.org

V. Counsel

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Anthony M. Barnes
Aqua Terra Aeris (ATA) Law Group
828 San Pablo Ave, Ste 115B
Albany, CA 94706
(917) 371-8293
amb@atalawgroup.com

VI. Conclusion

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against G3 Enterprises and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Anthony M. Barnes
ATA Law Group
Counsel for California Sportfishing
Protection Alliance

ATA
ADAMS TERRA ALERIS
LAW GROUP

SERVICE LIST

VIA CERTIFIED MAIL RETURN RECIEPT REQUESTED

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator
U.S Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Patrick Pulupa, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Jeff Sessions
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

EXHIBIT A

Rain Data: USW00023258 MODESTO CITY CO AIRPORT, CA US
5-4-2013 - 5-4-2018
Days with Precipitation over .1

Date	Precipitation (Inches)
5/6/2013	0.13
9/21/2013	0.13
11/19/2013	0.21
11/20/2013	0.89
12/7/2013	0.23
1/30/2014	0.42
2/6/2014	0.23
2/7/2014	0.24
2/8/2014	0.24
2/26/2014	0.6
2/28/2014	0.98
3/1/2014	0.14
3/3/2014	0.23
3/26/2014	0.43
3/29/2014	0.51
4/1/2014	0.59
4/25/2014	0.36
9/25/2014	0.3
10/31/2014	0.65
11/13/2014	0.27
11/29/2014	0.37
11/30/2014	0.25
12/2/2014	0.87
12/3/2014	0.12
12/11/2014	2.18
12/12/2014	0.76
12/15/2014	0.71
12/16/2014	0.45
12/19/2014	0.19
12/20/2014	0.18
2/6/2015	0.1
2/7/2015	0.36
2/8/2015	0.93
2/22/2015	0.37
3/11/2015	0.19
4/7/2015	0.41
4/25/2015	0.16
5/7/2015	0.17
5/14/2015	0.1
10/1/2015	0.11
11/2/2015	0.97

Date	Precipitation (Inches)
11/8/2015	0.56
11/9/2015	0.22
11/15/2015	0.11
11/24/2015	0.26
12/3/2015	0.29
12/10/2015	0.12
12/13/2015	0.24
12/19/2015	0.43
12/21/2015	0.26
12/22/2015	0.3
12/24/2015	0.21
1/5/2016	1.08
1/6/2016	0.53
1/16/2016	0.24
1/17/2016	0.35
1/18/2016	1.28
1/19/2016	0.75
1/22/2016	0.17
1/23/2016	0.11
1/30/2016	0.16
1/31/2016	0.2
2/17/2016	0.48
3/4/2016	0.26
3/5/2016	0.99
3/6/2016	0.27
3/7/2016	0.75
3/11/2016	0.26
3/13/2016	0.82
3/14/2016	0.11
3/21/2016	0.28
4/8/2016	0.15
4/9/2016	1.16
4/10/2016	0.16
5/6/2016	0.23
10/16/2016	0.18
10/27/2016	0.16
10/28/2016	1.6
11/20/2016	0.35
11/26/2016	0.2
11/27/2016	0.22
12/8/2016	0.37
12/10/2016	0.25
12/15/2016	0.45
12/16/2016	0.2
12/23/2016	0.67
1/3/2017	0.35

Date	Precipitation (Inches)
1/4/2017	0.18
1/7/2017	0.69
1/8/2017	0.73
1/9/2017	0.19
1/10/2017	0.86
1/12/2017	0.13
1/18/2017	0.74
1/20/2017	1
1/21/2017	0.17
1/22/2017	0.31
2/2/2017	0.22
2/3/2017	0.22
2/6/2017	0.37
2/7/2017	0.16
2/8/2017	0.1
2/9/2017	0.37
2/10/2017	0.51
2/16/2017	0.1
2/17/2017	0.29
2/19/2017	0.1
2/20/2017	0.99
3/20/2017	0.26
3/21/2017	0.18
3/22/2017	0.67
4/6/2017	0.13
4/7/2017	0.15
4/8/2017	0.43
4/16/2017	0.32
4/18/2017	0.28
5/31/2017	0.14
10/20/2017	0.12
11/9/2017	0.12
11/16/2017	0.46
11/27/2017	0.19
1/4/2018	0.28
1/6/2018	0.22
1/8/2018	0.91
1/9/2018	0.79
1/18/2018	0.11
1/24/2018	0.12
2/26/2018	0.17
3/1/2018	0.51
3/3/2018	0.11
3/13/2018	0.39
3/16/2018	0.18

Date	Precipitation (Inches)
3/20/2018	0.11
3/21/2018	0.27
3/22/2018	0.15
3/24/2018	0.23
4/6/2018	1.19
4/7/2018	0.59
4/16/2018	0.43